

## UNITED STATES DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE

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## EMPLOYMENT OF FOREIGN STUDENTS

### About Foreign Students

Form I-94 Arrival-Departure Records bearing the notation F-1, M-1, or in some cases J-1, designate persons admitted to the United States (US) under these temporary classifications as foreign students attending approved American educational institutions. In addition, F-1 and M-1 foreign students are issued Forms I-20 by institutions approved by INS for admission of foreign academic or vocational students under these classifications. J-1 foreign students are issued the United States Information Agency (USIA) Form IAP-66 by their approved college or university sponsors. Aliens may study in the US under other nonimmigrant classifications, but the study must be incidental to the primary status. These aliens, who are not covered in this bulletin, are not eligible for benefits (e.g. practical training) of the student-specific classifications.

### Admission of Foreign Students to the US

Arrival Departure Records (Forms I-94) of F-1 students indicate that they have been admitted to the US for the duration of status (D/S), i.e. as long as necessary to complete the approved course of study, a post-completion period of practical training during which they are entitled to employment authorization, plus a "grace period" of 60 days within which to depart from the US. M-1 students are admitted for the lesser of one year or the period of time necessary to complete the approved course of study plus a "grace period" of 30 days. J-1 students are admitted for the duration of approved exchange programs (D/S) sponsored by an American educational institution plus a "grace period" of 30 days.

### Forms Issued to Foreign Students

Once a foreign student is admitted to an approved US institution, documentation of the foreign student status will be issued by the institution to the student. The approved academic institution will issue Forms I-20 AB and I-20MN to F-1 and M-1 students, respectively, and Form IAP-66 to J-1 students. Issuance is conditioned upon documentation from a student that he/she has the resources necessary from personal sources plus financial aid to meet costs of tuition, academic expenses and subsistence in the US. The foreign student will later need to show the institution issued documentation when trying to obtain a visa.

### Consular Visas for Foreign Students

To be granted an F-1, M-1, or J-1 visa to travel to the US by US consulates in their home countries, foreign students must demonstrate that they have the approved institutional support and/or personal/family financial resources necessary to meet their tuition and subsistence needs. This process is meant to insure that most foreign students will not **need** to work off campus while they are attending school full-time.

### Importance of Maintaining Student Status

Whether subject to the general rule regarding employment or eligible for one of the exceptions, aliens in F-1, M-1 or J-1 status are required to maintain **full-time** course loads during the school year in order to maintain that status and remain legally in the US (see footnote 3). There is an important distinction between eligibility to **work** and eligibility to **remain** in the US. Both issues are important, since even though a given student may meet one of the employment exceptions and present the required documents, he/she is not work authorized if **out of status**, i.e. not enrolled as a full-time student (excluding summers) at the approved institution.

## EMPLOYMENT OF ACADEMIC STUDENTS (F-1)<sup>1</sup>

The general rule is that foreign students in F- status are **not** permitted to work in the US. However, there are significant exceptions. F-1 students *who maintain F-1 status* may be employed as follows:

### ON CAMPUS<sup>2</sup>

On campus employment is available to any F-1 foreign student. Since this employment is deemed to be offered by the approved academic institution, no endorsement by the designated school official (DSO) is required on the Form I-20. On campus employment may not exceed 20 hours per week during academic semesters, but may be full-time during holidays and vacations provided that the student is eligible to register for the next term or semester.

### PRACTICAL TRAINING

**Curricular practical training:** In order to qualify, the student must have been enrolled for at least nine months of full time study at the approved academic institution, and the employment must be required for graduation from the approved academic program or earn academic credit from the academic institution. It may consist of alternate work/study, internship, cooperative education, or any other type of required internship or practicum offered by sponsoring employers through cooperative agreements with the school. The document required to establish employment eligibility to employers is the Form I-20 ID certified by the designated school official (DSO) from the student's approved institution. Although the DSO must notify INS of practical training on Form I-538, INS approval is not required. Employers are not responsible for any part of this process or for reviewing documentation other than the unexpired foreign passport (except for Canadian citizen students) Form I-94 and endorsed Form I-20.

**Optional practical training:** The purpose of practical training is for the students to apply the knowledge and skills gained from their educational programs. The student must have been enrolled for at least nine months of full time study at the approved academic institution. Temporary off campus employment may be permitted for 20 hours (maximum) per week or full-time during summers and between academic sessions. The document required to establish employment eligibility to employers is an Employment Authorization Document (EAD) issued by INS (Form I-688B or I-766). Optional practical training may be *curricular*<sup>3</sup> or *post-curricular*<sup>4</sup>. Both types of optional practical training require an EAD issued by INS. The student must submit a Form I-538 request accompanied by the student's current Form I-20 ID. If the DSO makes a recommendation for practical training the Form I-20 is endorsed and returned to the student while the Form I-538 is sent to INS. The F-1 student then applies to the INS for the EAD by filing the Form I-765 which includes the DSO's recommendation for practical training on the I-20 ID. Employment of this type may not commence until the student receives the EAD.<sup>5</sup>

### UNFORESEEN HARDSHIP<sup>6</sup>

A foreign student faced with severe economic hardship, beyond his/her control, that could not have been anticipated upon application for admission to the US, may apply to INS for an EAD authorizing him/her to engage in any type of available employment under the following conditions.

- on-campus employment is not available
- student has been issued an EAD by INS
- employment does not exceed 20 hours per week during academic semesters

<sup>1</sup> In addition to the options below, students maintaining lawful F-1 status may engage in internships with recognized international organizations (e.g. World Bank or United Nations) with written permission from their designated school officials. **NOTE:** The pilot program created by the Immigration Act of 1990, which allowed foreign students to work off campus for any employer who files a Labor Condition Attestation (LCA) with the US Department of Labor after completing a full academic year in good standing, expired on September 30, 1996.

<sup>2</sup> "On campus" includes off campus work supervised by a professor or school official and funded by a fellowship, grant or contract between the student's institution and the off campus employer. It does not include commercial employment physically located on campus but not involved in providing direct student services.

<sup>3</sup> Curricular practical training must be in the field of study and involve duties appropriate to the level of study.

<sup>4</sup> Foreign students who have completed coursework for a bachelor's, master's or doctoral degree or met all degree requirements, are eligible to work for a total period of 12 months less time spent prior to graduation in optional practical training (part-time work is prorated, e.g. 6 months half-time = 3 months full-time). Post-curricular practical training must be completed no later than 14 months after completion of the approved academic program.

<sup>5</sup> The filing of an EAD application is not sufficient to establish employment authorization, nor is a receipt from INS acknowledging that the application is being processed. Processing of I-765 applications takes at least 90 days.

<sup>6</sup> See text below for information about special exemptions applying, while in effect, to students from Indonesia, South Korea, Thailand, Malaysia, and the Philippines.

### EMPLOYMENT OF VOCATIONAL STUDENTS (M-1)

This classification covers students pursuing full-time vocational and other nonacademic educational programs. The **only employment option** for M-1 students is post-completion practical training approved by the DSO, who must endorse the student's I-20 MN copy. Employment may be authorized for one month for every four months of study, up to a **maximum of 6 months**. The document required to establish employment eligibility is an employment Authorization Document (EAD) issued by the INS (Form I-688B or I-766).

### EMPLOYMENT OF EXCHANGE VISITORS STUDYING IN US (J-1)

Exchange visitor programs are arranged through the United States Information Agency (USIA). Although they may consist of US studies that make the participating J-1 exchange visitor students virtually indistinguishable from foreign students in F-1 status, different rules apply. Some exchange programs allow participants to be employed in their specialty fields, while other programs restrict participants to study or research. In all cases, as with F-1 students, employers must insure that J-1 employees not only are lawfully permitted **to work** (and, if so, to work for them) but that they are only employed during the period for which they have been approved to remain in the US.

Permissible employment, if any, should be indicated on the Form IAP-66 of those J-1 visitors whose USIA-approved program guidelines permit employment. Generally, this employment is *employer-specific*, meaning that the individual may work only for the employer which has been approved by the program sponsor<sup>7</sup>. In cases where the IAP-66 is not clear with respect to given employment, employers may wish to review the individual's Form I-94 and/or written approval of the J-1 program official.

### EMPLOYMENT OF FOREIGN STUDENTS ADMITTED UNDER OTHER CLASSIFICATIONS

Nonimmigrants admitted to the US under temporary classifications other than F-1, M-1, or J-1, although permitted to engage in study in the US if incidental to their status, are not entitled/restricted by virtue of those studies, *per se*, to employment opportunities available to F-1, M-1 or J-1 students. Employment of these individuals is governed by restrictions associated with the classifications under which they were **admitted** to the US, as indicated on Form I-94.

### TEMPORARY EMPLOYMENT RULES FOR ELIGIBLE ASIAN STUDENTS

By regulation, INS has temporarily suspended the applicability of certain requirements governing on-campus employment for F-1 students whose means of financial support, as reflected in the students' Forms I-20, is from Indonesia, South Korea, Malaysia, Thailand, or the Philippines.<sup>8</sup> Until further notice, these affected students are exempted from the normal student employment requirements in order to continue their studies in the US<sup>9</sup>. Specifically, eligible F-1 students are permitted to exceed the 20-hour limit on both on-campus and off-campus employment and to reduce their full course of study without violating F-1 status, as follows:

#### On-Campus Employment

Students must demonstrate to their DSO that the employment is necessary to avoid severe economic hardship caused by the economic crisis taking place in one of the five specified countries from which their means of financial support is derived. Eligible F-1 students are authorized to work over 20 hours per week while school is in session if the DSO endorses the student employment box on page 4 of the school and student copies of the Form I-20 as follows: *Approved for more than 20 hour per week of on-campus employment under the Special Student Relief authorization from [beginning date of employment] until [earlier of last day of program or one year from employment start date].*

#### Off-Campus Employment

The following requirements have been suspended for eligible Asian students:

- that the student has been in F-1 status for one full academic year;
- that acceptance of employment will not interfere with the student's carrying a full course of study;
- that the student's work authorization is limited to no more than 20 hours per week when school is in session.

<sup>7</sup> The program sponsor of a J-1 student is the approved institution.

<sup>8</sup> The currencies of these countries have experienced a sudden and severe drop in value relative to the US dollar.

<sup>9</sup> To be considered to be maintaining F-1 status, undergraduate students must remain registered for a minimum of 6 semester or quarter hours of instruction per academic term and graduate students must remain registered for a minimum of 3 semester or quarter hours of instruction per academic term for the period of authorized employment.